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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/665,061	09/19/2003	Luc Lemmens	1316N-001687	5489

27572 7590 05/11/2005

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EXAMINER

WILLIAMS, THOMAS J

ART UNIT PAPER NUMBER

3683

DATE MAILED: 05/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

~~10/665,061~~

Applicant(s)

LEMMENS ET AL.

Examiner

Thomas J. Williams

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

**DETAILED ACTION**

1. Acknowledgment is made in the receipt of the oath September 19, 2005.

***Claim Objections***

2. Claims 17 and 18 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. It appears that the dependency of claims 11-18 are improper (most likely a typographical error), currently they depend upon claim 9, as such claims 17 and 18 are duplicates of claims 8 and 9.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 2, 7, 8, 10, 19, 20, 25, 26 and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by US 3,391,922 to Axthammer.

Re-claims 1 and 10, Axthammer discloses a suspension system, comprising: a frequency damper defining a first pressurized working chamber 16/18; an air spring assembly defining a second pressurized working chamber 17; a booster 14'/14'' enables pressure communication between the first pressurized working chamber and the second pressurized working chamber, the booster includes a resilient member that effects booster performance. The air pressure in

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chamber 14" acts as a resilient member that effects booster performance. Furthermore, the o-rings in piston 14 are resilient members that will effect booster performance.

Re-claims 2 and 20, the housing defining segmented chambers 14'/14"; and a piston assembly 14 is slidably disposed within the segmented chambers.

Re-claims 7 and 25, a restrictor 19 is disposed between the air spring assembly and the booster to inhibit pressurized fluid flow therebetween.

Re-claims 8 and 26, the booster comprises a housing defining a chamber; and a piston 14 is slidably disposed within the chamber to define segmented chambers.

Re-claim 19, Axthammer discloses a vehicle, comprising: a sprung component and an unsprung component, see column 1 lines 20-24; a suspension system is disposed between the sprung and unsprung components, the suspension system comprising: a frequency damper defining a first pressurized working chamber 16/18; an air spring assembly defining a second pressurized working chamber 17; a booster 14'/14" enables pressure communication between the first pressurized working chamber and the second pressurized working chamber, the booster includes a resilient member that effects booster performance. The air pressure in chamber 14" acts as a resilient member that effects booster performance. Furthermore, the o-rings in piston 14, are resilient members that will effect booster performance through frictional interaction with the walls of the cylinder.

Re-claim 28, the frequency dependent damper and air spring comprise an integrated shock assembly.

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***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claims 9, 11, 16-18 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Axthammer in view of US 2,774,446 to Bourcier de Carbon.

Re-claims 9, 18 and 27, Axthammer fails to teach the resilient member biasing the piston. Bourcier de Carbon teach a biasing member F working in combination with air (see valve M) to bias a piston against a working chamber pressure increase. It would have been obvious to one of ordinary skill in the art to have provided the piston 14 of Axthammer with a biasing element such as the spring taught by Bourcier de Carbon, thus providing a means of maintaining the piston element in a neutral position during periods of low pressure in the working chamber 16.

Re-claim 11, the housing defining segmented chambers 14'/14"; and a piston assembly 14 is slidably disposed within the segmented chambers.

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Re-claim 16, a restrictor 19 is disposed between the air spring assembly and the booster to inhibit pressurized fluid flow therebetween.

Re-claim 17, the booster comprises a housing defining a chamber; and a piston 14 is slidably disposed within the chamber to define segmented chambers.

### ***Double Patenting***

8. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

9. Claims 1-28 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-22 of U.S. Patent No. 8,814,347 to Lemmons et al. in view of US 2,774,446 to Bourcier de Carbon. Lemmons et al. fail to teach the working chamber 70 having a resilient member that effects booster performance. Bourcier de Carbon teaches the use of a spring in a working chamber for biasing a piston element. It would have been obvious to one of ordinary skill in the art to have provided the working chamber of Lemmons et al. with a biasing element, such a spring as taught by Bourcier de Carbon, thus providing a means of biasing the piston to a normal condition.

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***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Bell teaches a valve element that interposed between a first pressurized chamber and a second pressurized chamber. Vogel et al., Krauss, and Pradel teach a suspension system.

11. Any inquiries concerning this communication or earlier communications from the examiner should be directed to Thomas Williams whose telephone number is 571-272-7128.

The examiner can normally be reached on Monday-Thursday from 6:30 AM to 4:00 PM. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dave Bucci, can be reached at 571-272-7099. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-6584.

TJW

May 6, 2005

THOMAS WILLIAMS  
PATENT EXAMINER

*Thomas Williams*

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5-6-05